



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11940/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

Decision & Reasons

On 23 April 2019

**Promulgated
On 29 April 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMED HEDI SEHLI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I shall refer to the appellant as the respondent under the respondent as the appellant, as they appeared respectively before the First-tier Tribunal. The appellant was born on 14 April 1975 and is a male citizen of Tunisia. The Secretary of State, in a decision dated 16 May 2018, refused the appellant's application to remain in the United Kingdom on human rights grounds. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 24 September 2018, allowed the appeal on Article 8 grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing at Manchester on 23 April 2019, the appellant did not attend nor was he represented. I am satisfied that the notice of hearing has been sent to the appellant's solicitor in Manchester and to the appellant's last known address in the United Kingdom in Warrington. One does not, perhaps, have to look very far for the reason for the appellant's absence; the appellant left the United Kingdom on 18 September 2018 and returned to Tunisia apparently because his father was unwell. His departure is recorded in the judge's decision at [48]. Indeed, prior to the promulgation of the Tribunal's decision, the appellant sought to withdraw his appeal an application which the judge refused because the application had not been made in writing before the hearing and because the application was not made by the appellant orally at the hearing.
3. As Mr Tan, who appeared for the Secretary of State before the Upper Tribunal, pointed out, the judge has overlooked the operation of section 92(8) of the Nationality, Immigration and Asylum Act 2002 (as amended):
 - (8) Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under section 94(1) or (7) or section 94B.
4. The section is unequivocal; the appellant's appeal was not certified under section 94 so the judge should have treated it as abandoned whether or not he gave permission for the appeal to be withdrawn. I am aware that this issue is not referred to in the Secretary of State's grounds of appeal but attention was drawn to it by the judge who granted permission and I have dealt with it because it goes to the status of the appeal. Given that the judge was aware that the appellant had left the country before he promulgated his decision (there is nothing to indicate that the judge gave any indication at the hearing itself of the outcome of the appeal) he should have treated the appeal as abandoned.
5. In the circumstances, I set aside the judge's decision. I have remade the decision. The appellant's appeal was, from 18 September 2018, to be treated as abandoned by operation of section 92(8) of the 2002 Act.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 24 September 2018 is set aside. I have remade the decision. The appeal of the appellant shall, as from 18 September 2018, be **treated as abandoned**.

Signed

Date 23 April 2019

Upper Tribunal Judge Lane